IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7215 of 2004
with
Special Civil Application No. 11982 of 2004
with
Special Civil Application No. 11983 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD ELECTRICITY CO.LTD.

Versus

ATMARAM BECHARDAS PATEL

Appearance:

1. Special Civil Application No. 7215 of 2004
MR KB PUJARA for Petitioner No. 1
RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/11/2004

ORAL COMMON JUDGEMENT

In all these petitions under Article 226/227 of

the Constitution of India, the petitioner Ahmedabad Electricity Company ["the AEC" for short], original-defendant, has prayed for an appropriate writ, direction or order to set aside the action of the learned City Civil Court, Ahmedabad, in entertaining Civil Suit No. 1644 of 2004, Civil Suit No. 2384 of 2004 and Civil Suit No. 2113 of 2004.

2. The respondent of Special Civil Application No. 7215 of 2004 is consumer of petitioner company who is having electricity connection being Service No. 3037582. Inspection was carried out on 11.6.2004 by the officers of the petitioner company when it was found that there was unauthorised drawing of power through underground cable of approximately 90 metres for the purpose of running Ice-cream factory and scratches of magnet were also found on the meter cover and therefore it was considered as a case of malpractice/theft of electricity. It is the case of the petitioner that considering the provisions of the Indian Electricity Act of 2003 as well as conditions of supply, supply of electricity to respondent came to be disconnected on 11.6.2004 and assessment of theft/malpractice was carried out and a supplementary bill for an amount of Rs. 5,74,228 came to be issued by the petitioner. The respondents had filed Civil Suit No. 1644 of 2004, Civil Suit No. 2384 of 2004 and Civil Suit No. 2113 of 2004 in the City Civil Court at Ahmedabad for a declaration regarding action on disconnection and for a mandatory injunction of restoration of supply. The City Civil Court at Ahmedabad issued summons/notices in the aforesaid suits, and as according to the petitioner the Civil Court has no jurisdiction to entertain the civil suit and grant any injunction in view of Section 145 of the Indian Electricity Act of 2003, the present Special Civil Application has been filed.

3. So far as Special Civil Application No.11982 of 2004 is concerned, as the respondent consumer was found to have used the magnet so as to commit theft of energy the electricity supply has been disconnected on 28.8.2004 and a supplementary bill of Rs. 1,28,263 is issued by the petitioner company against respondent and the respondent herein had filed Civil Suit No. 2384 of 2004 in the City Civil Court at Ahmedabad for a declaration regarding action of disconnection and for a mandatory injunction against the company. As according to the petitioner Electricity Company the Civil Court has no jurisdiction to entertain the suit, in view of Section 145 of the Indian Electricity Act of 2003, {"the Act" for short], the present Special Civil Application has been

filed.

4. So far as Special Civil Application No. 11983 of 2004 is concerned, as it was found by the petitioner company that there was a theft of energy by direct consumption of power by bypassing the meter and treating the same as malpractice/theft of electricity, the supply of electricity has been disconnected on 14.6.2004. On assumption that the respondent is served with supplementary bill for an amount of Rs. 65,019 for theft/malpractice the respondent had preferred Civil Suit No. 2113 of 2004 in the City Civil Court at Ahmedabad for a declaration regarding action of disconnection and for a mandatory injunction of restoration of electric supply. The learned City Civil Court at Ahmedabad had entertained the aforesaid Civil Suits and therefore the petitioner preferred the present Special Civil Applications under Article 226/227 of the Constitution of India against entertainment of Civil Suits by the City Civil Court at Ahmedabad as according to the petitioner the Civil Court will not have any jurisdiction in view of Section 145 of the Indian Electricity Act of 2003.

5. None appears on behalf of the respondents, though served. Shri KB Pujara, learned advocate appearing for the petitioner has relied upon the provisions of Section 145 of the Act. He has relied upon the judgments of this Court in the case of AEC Vs. Ramesh D. Devnani in Special Civil Application No. 8325 of 2004 and Leenaben, w/o. Sohanlal Hemandas Soni Vs. AEC, in Special Civil Application No. 10007 of 2004 and allied matter and submitted that as held by this Court in the aforesaid two judgments that as the Civil Court will not have jurisdiction to entertain the suit the Civil Court cannot grant anyinjunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act of 2003. Therefore it is submitted to allow the present Special Civil Application and quash and set aside the action of the learned City Civil Court at Ahmedabad in entertaining the suits preferred by the respective respondents.

6. Considering the provisions of Section 145 of the Electricity Act of 2003, prima facie, it appears that jurisdiction of the Civil Court is barred. Not only that, but the Civil Court has no jurisdiction to grant any injunction in the matter of action taken by the authority under the provisions of the Electricity Act of 2003. This Court had an occasion to consider the provisions of Section 126, 127, 135 and 145 of the Electricity Act of 2003 and also the Conditions of Supply

of electricity. Considering the aforesaid provisions, this Court in the aforesaid two judgments, i.e., AEC Vs. Ramesh D. Devnani in Special Civil Application No. 8325 of 2004 and Leenaben, w/o. Sohanlal Hemandas Soni Vs. AEC, in Special Civil Application No. 10007 of 2004 and allied matter has held that the Civil Court will not have any jurisdiction to entertain the suit in respect of assessment and/or any action taken by the authority and to grant any injunction against action taken by the authority under the provisions of the Electricity Act of 2003. This Court has also held that even the petitioner company has jurisdiction and authority to disconnect the electricity supply even without issuing any notice in cases where there is a case of malpractice and/or theft of electricity. However, in view of the fact that the petitioner has not approached the City Civil Court by making an appropriate application pointing out to the City Civil Court, Ahmedabad to the effect that the City Civil Court has no jurisdiction to entertain the suit with regard to entertainment of civil suit and/or action taken against the officers under the provisions of Electricity Act of 2003, the petitioner is directed to make an application before the City Civil Court at Ahmedabad pointing out to the City Civil Court at Ahmedabad that it has no jurisdiction to entertain the suit and/or grant any injunction, consideration the provisions of Section 145 of the Electricity Act of 2003 as well as Conditions of Supply. It will be open for the petitioner to point out the judgments of the learned Single Judges of this Court in the aforesaid two cases. As and when such an application is made, the trial Court is directed to consider the same and, treating the same as a preliminary issue, pass an appropriate order within the period of 2 months from the date of filing of such application after giving opportunity of hearing to the plaintiffs as well as defendants. Under the circumstances, at present no order is passed except the aforesaid direction.

7. With these observations and direction, the present Special Civil Applications are disposed of. Rule is made in each of the matter with no order as to costs.

[M.R. Shah, J.]

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